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Professor Eva Lievens speaks on protecting minors more effectively across media platforms



Following the successful [EBU Legal Workshop on Platform Regulation](#) which took place last November, the EBU has invited several experts to provide further insights.

Protection of Minors in a converging environment

The second expert in our series is [Professor Eva Lievens](#). Professor of Law and Technology at the Law Faculty of Ghent University, her research focuses on legal challenges posed by new media and ICT phenomena, with a specific focus on the protection of minors, fundamental rights and alternative regulatory instruments.

Professor Lievens answered our questions on the EU regulatory framework in the age of new platforms.

Why is there no level playing field for the protection of minors within the EU?

There are two main reasons why there is an unlevel playing field with regard to the protection of minors within the European Union.

First, currently different audiovisual services are subject to different rules. The Audiovisual Media Services Directive is applicable to linear and non-linear audiovisual media services. The first are more traditional services, such as linear television broadcasts where the broadcaster is in control and decides which programmes will be broadcasted at what time. The second category of services are the so-called 'on demand' services, which are included in a catalogue determined by the service provider, and which viewers can watch at the time and place they prefer. Because viewers are assumed to have more control and choice with regard to the second category of services, the obligations that are imposed on non-linear services are lighter than the obligations with which traditional linear broadcasters have to comply.

That is also the case with regard to the provisions related to the protection of minors. For instance, whereas linear services should not contain any programmes which might seriously impair the physical, mental or moral development of minors (e.g. pornography), the same type of programmes may be provided on non-linear services, but only if they are made available in such a way as to ensure that minors will not normally hear or see them (for instance by means of a PIN code). In short, this leads to a situation where the same content item (such as a movie) may be subject to stricter or more lenient rules depending on the manner in which the services are provided to the viewer.

Second, the Audiovisual Media Services Directive provides for minimum harmonisation across the EU. This means that Member States can impose stricter or more detailed rules with regard to the protection of minors than the Directive. Certain Member States, such as Belgium (Flanders), have taken this opportunity with regard to advertising and minors (the Flemish Media Decree contains prohibition of commercial communication for toys that resemble fire arms), or France, with regard to the regulation of on-demand services, where seriously harmful

content is prohibited. This leads to a situation where the level of the protection of minors varies across the different Member States.

Furthermore, the provisions implemented in every Member State will in practice be enforced by national regulators. Although different mechanisms and platforms where these regulators meet and exchange views and best practices do exist, the priorities of national regulators diverge and thus the provisions with regard to the protection of minors are enforced in varying manners across the EU.

Is a regulatory framework distinguishing between different types of media still appropriate in the platform age?

It is unquestionable that due to increasing convergence between technologies, means of delivery and devices, audiovisual content reaches viewers and consumers in a myriad of different ways and the same content may be delivered through various platforms. In this situation it seems increasingly untenable that providers delivering the same type of content through different channels be subject to different rules. Moreover, it also seems unfair that providers delivering that same type of content from outside the EU are not subject to the same rules as providers established within the EU.

With regard to the protection of minors, a particular aspect relates to the expectations of viewers on the level of protection. As television sets will become increasingly 'connected devices', which are able to connect to the internet, users will very easily move between the television environment and the online environment, sometimes without even realising this. Tablets and smart phones, devices which are extensively used by even very young children (see for instance the JRC study on [Young children and digital technology](#)), also make it much easier to switch between environments.

Imagine your child watching his or her favourite television programme and with a click being able to watch a video clip of the programme's title song on YouTube, to buy a book with more background on the characters on Amazon, or to play a game on the show's website in order to win a prize. If each of those different environments is regulated in a different manner this may create confusion for viewers, parents as well as children. Not only with regard to the level of protection that is actually provided, but also, for instance, regarding the possibilities to submit complaints in cases of non-compliance with existing rules.

If a consensus emerges that a similar level of protection for minors across media channels and platforms is needed, the difficult question is whether to level up (towards the stricter obligations for television(-like) services), or to level down (towards the much lighter obligations for online services).

For the former category, regulation is currently still government-led; for the latter, self- and co-regulation mechanisms have been the European Commission's preferred instruments. Self-regulation entails that the industry, *in casu* the service or platform providers, takes responsibility for creating, implementing and enforcing rules to protect minors. Co-regulation is based on self-regulation, but entails that the government also plays a role, for instance, with regard to monitoring and the independent evaluation of the commitment of industry actors. Personally, I believe that a carefully considered co-regulation system, where there is a real, constructive interaction between government and industry, is a more appropriate instrument when it comes to protecting minors.

How can minors be protected more effectively from increasingly commercialised content?

It is a fact that minors come across a lot of commercial content, on television as well as online. Advertisers come up with new strategies, such as providing props and prizes for children's programmes or advergames (for instance an online or mobile game that is actually an ad for cereal). This blurring between commercial, information and entertainment content makes it very difficult for young children to recognise and critically process the persuasive messages that are integrated in these strategies. I believe that the basic principle of making sure that commercial communication is readily recognisable as such (for instance, Article 9 of the AVMS Directive), including for minors, remains very important. However, regulation should not be the only focus. Initiatives or tools that aim to increase the advertising literacy of children are essential. Increasing children's insight into what advertising is and aims to do is important to empower them, and raise them to become informed, critical citizens and consumers. The [AdLit](#) project is currently researching this issue, from various perspectives: communications science, marketing, educational science, and law, and aims to come up with concrete tools and recommendations to realise this goal.

A second aspect of commercialisation is that advertisers are increasingly interested in children's personal data, for instance their age, their sex, but also their viewing behaviour or content consumption patterns. They sometimes try to gather this data openly, sometimes covertly, but in very few cases children are aware of the fact that this is happening, let alone of its impact. At the moment, the rules with regard to data protection in the EU are being revised and will probably be adopted in the course of 2016. In the new rules, for the first time, explicit reference to data collection and processing with regard to minors has been included. It is still somewhat unclear what the exact obligations will be, but it seems that the obligations in this area will become stricter. At the same time, again, awareness and literacy with regard to this element is also something that the many stakeholders - governments, industry, civil society, educational actors and citizens themselves - should invest in.

Relevant Links

- [🔗 EBU examines future platform regulation in expert workshop](#)
- [🔗 Policy adviser Robin Foster shares his views on platform regulation](#)

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